



California Fair Political Practices Commission

April 4, 1989

Tony Marsh
President
Tony Marsh and Associates
c/o Russo, Watts, Rollins and Marsh
770 L Street, Suite 950
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-056

Dear Mr. Marsh:

This is in response to your request for advice regarding application of the new Proposition 73 provisions of the Political Reform Act (the "Act")^{1/} to a client of your campaign consulting firm. Because you have not provided the name of your client, we consider your request to be for informal assistance.^{2/}

QUESTION

Does Section 85304 of the Act, which bans transfers of contributions between candidates or their controlled committees, prohibit a Congressional campaign committee from paying a debt which was incurred in 1988 to an Assembly campaign committee?

CONCLUSION

1. Congressional candidate committees are not subject to the transfer ban restrictions of the Act. However, contributions from Congressional campaign committees to state and local committees or candidates are subject to the Act's monetary limits on contributions.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

2. The ban on transfer of contributions between candidates or their committees does not prevent a candidate from paying a campaign debt he or she owes to another candidate or controlled committee.

FACTS

A committee to elect a candidate to the California Assembly was formed in March 1988. Individuals controlling a California Congressional campaign committee guaranteed that all debts for the Assembly committee would be paid by the Congressional committee. An outstanding debt has existed since June 1988, and remains at approximately \$22,000.

The guarantors have said that they are prohibited from paying the debt owed to the Assembly committee because the Act prohibits transfers of contributions from one candidate controlled committee to another.

ANALYSIS

Section 85304 provides:

No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited.

Section 85304 was amended into the Act as a consequence of the adoption by the voters of Proposition 73 in the June 1988 primary election. The campaign contribution limitation provisions of Proposition 73, including the ban on transfers of contributions between candidates, became operative on January 1, 1989. (Section 85104.) Therefore, the new limitations imposed by Proposition 73 do not apply to any contributions made on or before December 31, 1988.

A Candidate for Federal Office is Not a "Candidate" for Purposes of the Act

The Act defines the term "candidate" to mean those persons seeking election to a state, regional, county, municipal, district or judicial office. (Sections 82007 and 82023.) Thus, the prohibition on the transfer of contributions between candidates and their controlled committees does not apply to candidates for federal office.

Candidates for federal office, and their campaign committees, may make contributions subject to the contribution limitation provisions of the Act. The contribution limitations which apply to federal candidates or their committees depend on their status as a contributor. (Sections 85301, 85302, 85303 and 85305; Stark Advice Letter, No. A-88-435, copy enclosed.)

Section 85304 Does Not Apply to Enforceable Promises to Make Payments Made Prior to January 1, 1989

The definition of "contribution" includes an enforceable promise to make a payment. (Section 82015.) Regulation 18216 (copy enclosed) clarifies that a person makes an "enforceable promise to make a payment" if he or she:

(b)

- (1) Guarantees a loan.
- (2) Furnishes security for a loan.
- (3) Endorses a loan.
- (4) Cosigns a loan.
- (5) Makes and delivers a post-dated check.
- (6) Establishes a line of credit at a bank or other commercial lending institution for a candidate or committee.
- (7) Promises in writing to make a payment for specific goods or services, and the candidate or committee, based on the promise, expends specific funds or enters into an enforceable contract with a third party.

Regulation 18216(b).

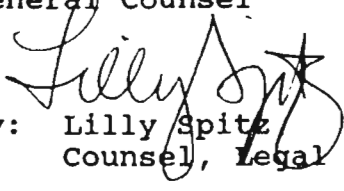
We have insufficient facts to determine whether the Congressional committee did, in fact, make an enforceable promise to pay the debts of the Assembly committee. However, if the promise to pay was enforceable and falls within the provisions of Regulation 18216, the contribution was made in March 1988, at the time of the promise. A payment made to satisfy that debt is not a prohibited transfer of a contribution under the Act.

Tony Marsh
April 4, 1989
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If you have any questions regarding this analysis, please
contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosure

[REDACTED]
& ASSOCIATES

FPPC

JAN 30 9 12 AM '89

January 25, 1989

Fair Political Practices Commission
Legal Division
428 J. St., #800
Sacramento, Calif. 95814

To whom this may concern:

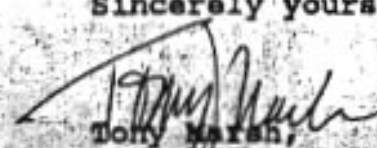
We are interested in getting your legal opinion on the following matter concerning Prop. 73:

A committee to elect a candidate to the California Assembly was formed in March 1988. Individuals controlling a California Congressional campaign Committee guaranteed that all debts for the Assembly committee would be met and paid by the Congressional committee. The outstanding balance has existed since June, 1988 and has been put off until 1989. Now the guarantors cite Prop. 73's restriction of no transfers between committees prohibits them from paying this debt. The Assembly committee has no funds of its own.

Please advise as to the law.

Thank you for your attention to this matter as an immediate opinion will be quite helpful.

Sincerely yours,


Tony Marsh,
President
Tony Marsh & Associates

Our new address: c/o Russo, Watts, Rollins & Marsh
770 L. St., Suite 950
Sacramento, Calif. 95814
phone (916) 441-3734

TM:jw
cc: Jeff Wallack, Controller



California Fair Political Practices Commission

January 31, 1989

Tony Marsh
Marsh & Associates
c/o Russo, Watts, Rollins & Marsh
770 L Street, Suite 950
Sacramento, CA 95814

Re: Letter No. 89-056

Dear Mr. Marsh:

Your letter requesting advice under the Political Reform Act was received on January 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *by Ked*

DMG:plh



JAN 25 9 12 AM '89

January 25, 1989

Fair Political Practices Commission
Legal Division
428 J. St., #800
Sacramento, Calif. 95814

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